

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

IN RE: VALSARTAN, LOSARTAN, AND
IRBESARTAN PRODUCTS LIABILITY
LITIGATION

No. 1:19-md-2875-RBK
Hon. Robert Kugler
Hon. Joel Schneider

This document relates to:

All Actions

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs respectfully submit this Notice of Supplemental Authority in connection with Defendants' motions to dismiss (ECF 520-523), and Plaintiffs' omnibus opposition thereto (ECF 577).

On October 28, 2020, the Eleventh Circuit issued its *en banc* decision in *Muransky v. Godiva*, No. 16-16486 (attached as Ex. A hereto). While the opinion principally focuses on an issue unrelated to the motions to dismiss here – namely, a post-*Spokeo* challenge to the class settlement of a FACTA class action – the Eleventh Circuit re-affirmed its earlier ruling in *Debernardis v. IQ Formulations, LLC*, 942 F.3d 1076 (11th Cir. 2019). The parties here cited and discussed *Debernardis* in their motions to dismiss briefing. The *en banc* opinion in *Muransky* stated:

We have also relied on the judgment of Congress to discern concrete injuries. In *Debernardis v. IQ Formulations, LLC*, for instance, we considered the plaintiffs' claim that they were sold an adulterated dietary supplement as defined by the Food, Drug, and Cosmetic Act because the manufacturer failed to provide notice to the Food and Drug Administration that a new dietary ingredient was safe. 942 F.3d at 1080–82. Although the plaintiffs suffered no physical harm from the supplement, we concluded that they were sold a worthless product “that Congress judged insufficiently safe for human ingestion.” *Id.* at 1085. That deprived the plaintiffs of the benefit of their bargain and amounted to a direct economic loss that supported

standing. *Id.* at 1085–86. In short, a variety of approaches can demonstrate direct harm to a plaintiff.

Ex. A at 15. Similar to the *Debernardis* plaintiffs who suffered cognizable harm by purchasing worthless, adulterated dietary supplements, the economic loss and medical monitoring plaintiffs here suffered cognizable harm resulting from the purchase of worthless, adulterated valsartan-containing drugs. The *Debernardis* holding, as re-affirmed *en banc* by *Muransky*, further demonstrates Plaintiffs’ standing to assert their claims in this action.

Dated: October 29, 2020

Respectfully Submitted,

/s/ Ruben Honik

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MDL Plaintiffs’ Co-Lead Counsel, on behalf of the Plaintiffs’ Executive Committee and all Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2020, a true and correct copy of the foregoing was filed and served upon all counsel via operation of the CM/ECF system for the United States District Court for the District of New Jersey.

/s/ David J. Stanoch

David J. Stanoch